

TABLE OF CONTENTS

SECTION 2 RULES GOVERNING COMPETITION.....	1
2.1 OVERVIEW.....	1
2.1.1 Definitions.....	1
2.1.2 Key Action Dates.....	3
2.1.3 Americans with Disability Act (ADA):	4
2.2 PROPOSAL SUBMISSION REQUIREMENTS AND CONDITIONS	4
2.2.1 General.....	4
2.2.2 Confidentiality	5
2.2.3 Solicitation Documents	6
2.2.4 Disposition of Proposals	6
2.2.5 Examination of the Work.....	6
2.2.6 Questions Regarding the Solicitation.....	7
2.2.7 Changes Regarding the Solicitation.....	7
2.2.8 Oral Communications	7
2.2.9 Bidder's Conference	7
2.2.10 Intent to Bid	8
2.2.11 Addenda	8
2.2.12 Bonds	9
2.2.13 Cash Discounts.....	9
2.2.14 Joint Proposals	9
2.2.15 Bidder's Costs.....	9
2.2.16 Proposal Preparation	9
2.2.17 Submission of Proposals	9
2.2.18 Model Contract Language.....	10
2.2.19 State's Rights	10
2.3 PROPOSAL SUBMISSION PHASES AND STEPS	11
2.3.1 General.....	11
2.3.1.1 Overview of Phases and Steps	11
2.3.1.2 Content.....	11
2.3.1.3 False or Misleading Statements	11
2.3.1.4 Discussion Agenda.....	12
2.3.1.5 Confidential Bidder Discussion	12
2.3.1.6 Discussion Memorandum	12
2.3.1.7 Evaluation of Proposal(s).....	12
2.3.1.8 Proposal Evaluation Preferences.....	13
2.3.1.9 Submission of Amended Proposal(s).....	13
2.3.1.10 Withdrawal and Resubmission/Modification of Proposals.....	13
2.3.2 Compliance Phase.....	14
2.3.2.1 General.....	14

2.3.2.2	Qualification Proposal	14
2.3.2.3	Conceptual Proposal	14
2.3.2.4	Detailed Technical Proposal	14
2.3.3	Final Phase	15
2.3.3.1	General	15
2.3.3.2	Draft Proposal	15
2.3.3.3	Final Proposal	16
2.3.3.4	Additional Draft Proposal	16
2.3.3.5	Submission of Final Proposal	16
2.3.3.6	Evaluation and Selection of Final Proposal	17
2.3.4	Award of Contract/Intent to Award	19
2.3.5	Debriefing	19
2.4	CONTRACT TERMS AND CONDITIONS	20
2.4.1	Standard – No Modifications	20
2.4.2	Exception – With Modifications	20
2.4.2.1	Overview	20
2.4.2.2	Submission of Changes	21
2.4.2.3	Notification of Changes	22
2.5	PROTESTS	22
2.5.1	Initial Protest	22
2.5.2	Successful Supplier Selection Protest	23
2.5.2.1	Standard Protest	23
2.5.2.2	Alternative Protest Pilot	23
2.5.3	Protest Submission	23

SECTION 2

RULES GOVERNING COMPETITION

2.1 OVERVIEW

The purpose of competitive procurement is to secure the best solution to the public objectives at the lowest practical cost and avoid the possibilities of graft, fraud, collusion, etc. Competitive procurement is designed to benefit the public body (the State of California, or the State, in the present context), and is not for the benefit of the Bidders. It is conducted to accomplish its purposes with sole reference to the public interest. It is based upon full and free procurement to satisfy State specifications and acceptance by the State of the most value-effective solution to the State's requirements, as determined by the evaluation criteria contained in the solicitation.

Solicitations must provide a basis for full and fair competitive bidding among Bidders on a common standard, free of restrictions which unnecessarily stifle competition. Solicitations must be specific and provide an environment where all competitors are evaluated on the same end objectives.

2.1.1 Definitions

a. Bid

An offer made in response to a solicitation to perform a contract for work and labor or to supply goods at a specified price, whether or not it is considered a "sealed bid" or results in award of a contract to a single or non-competitively bid contract.

b. Bidder

A supplier who submits a bid to the State in response to a solicitation.

c. Desirable Items

The words "should" or "may" in the solicitation indicate non-mandatory attributes or conditions, but are permissive in nature. Deviation from or omission of such a desirable feature will not in itself cause rejection of a proposal.

d. Materiality

The State may or may not waive any immaterial deviation or defect in a proposal. The State's waiver of an immaterial deviation or defect shall in no way modify the solicitation documents or excuse the Bidder from full compliance with the solicitation specification if the Bidder is awarded the contract.

A deviation from a requirement is **Material** if the deficient response is not in substantial accord with the solicitation requirements, provides an advantage to one Bidder over other Bidders, or has a potentially significant effect on the delivery, quantity or quality of items proposed, amount paid to the vendor, or for the cost to the State. Material deviations cannot be waived.

A **Final Proposal** may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind if the State determines that those alterations or irregularities constitute a **Material** deviation from the solicitation requirements.

e. Proposal

See *Bid*.

f. Requirements

The State of California (the State) has established certain requirements with respect to proposals to be submitted by prospective Bidders. The use of “shall,” “must,” or “will” (except to indicate simple futurity) in the solicitation, indicates a requirement or condition from which a deviation, if not **Material** may be waived by the State.

The State has determined that it is best able to define its own needs and desired operating objectives expressed via the definition of requirements in the solicitation. The State will not tailor these needs to fit a solution a Bidder may have available; rather, the Bidder shall submit a proposal to meet the State’s needs as defined in the solicitation.

g. Sealed Proposals

A sealed proposal is one that is contained/wrapped/boxed in such a manner that no part of the proposal is revealed. Proposals not sealed when submitted, including **Final Proposals**, will be returned for sealing if time permits the sealing prior to the due date and time.

Final Proposals that are not sealed at the time and date of submission *and* reveal the cost of the proposal will be rejected.

Final Proposals that are not sealed at the time and date of submission and do not reveal the cost of the proposal will be so noted by the Procurement Official and accepted as if received appropriately sealed.

h. Solicitation

The process, whether a Request for Proposal (RFP), Request for Quotation (RFQ), or Invitation for Bid (IFB), etc., of notifying prospective Bidders that the State wishes to receive proposals for furnishing goods or services.

i. Supplier

A business entity, Bidder, offeror, vendor, or contractor.

j. Writing/written

Written submissions from the Bidders, e.g., questions, and written responses from the State, e.g., **Discussion Memorandum**, may include electronic mail, facsimile transmission, or posting on a website (e.g., from the State or a Bidder's financial responsibility information).

2.1.2 Key Action Dates

At a minimum, the following steps will be included in the solicitation's **Key Action Dates**:

- Intent to Bid
- Last Day to Submit Questions
- Last Day to Request Changes
- Last Day to Submit an **Initial Protest**
- **Final Proposal** Due Date
- Intent to Award
- Contract Award

Additional steps may be included as appropriate to the solicitation, such as:

- **Bidder's Conference**
- Proposal Due Dates other than **Final Proposal**, e.g. **Qualification Proposal**, **Draft Proposal**, etc.
- Release **Discussion Agenda**¹
- Confidential Bidder Discussion
- Release **Discussion Memorandum**²
- Submission of Contract Language Changes

¹ May just be noted as "Three business days prior to the Confidential Bidder Discussion" or words to that effect.

² May just be noted as "Within five business days after the conclusion of the Confidential Bidder Discussion" or words to that effect.

2.1.3 Americans with Disability Act (ADA):

To meet and carry out compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, employment opportunities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodation for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) and California Relay Service numbers are listed below. You may also contact directly the Procurement Division contact person that is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR ACCOMMODATION, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice/TTY: 711

2.2 PROPOSAL SUBMISSION REQUIREMENTS AND CONDITIONS

2.2.1 General

This solicitation, the evaluation of responses, and the award of any resultant contract shall be made in conformance with the criteria defined herein. A competitive proposal, once submitted and opened, is in the nature of an irrevocable offer for 180 days following the scheduled date for contract award specified in Section 1.5, KEY ACTION DATES. The Bidder's Final Proposal shall be considered a contract right of which the public agency cannot be deprived without its consent, unless the requirements for rescission are present. A Bidder may extend the offer in writing in the event of a delay of award.

For a variance between the solicitation and the responding proposal to be such as to preclude acceptance (the proposal must be rejected), the variance or deviation must be material. To have competition, responding Bidders must be bidding on the same goods and services. Proposals that prevent such competition or, in other words, allow variations that could significantly affect the cost of the proposal or could provide an advantage or benefit not allowed other Bidders, cannot be accepted. If such a potential effect exists, the deviation is **Material**.

Responding proposals must be for all of the goods and services requested in the solicitation, unless the solicitation specifically permits a partial response.

2.2.2 Confidentiality

- a. The Bidder participating in the solicitation, as evidenced by the submission of an Intent to Bid, warrants that its company and its employees will not disclose any documents, diagrams, information and information storage media made available to it by the State for the purpose of responding to the solicitation or in conjunction with any contract arising therefrom. Only those employees who are authorized and required to use such materials will have access to them.
- b. The Bidder further warrants that all materials provided by the State will be returned promptly after use and that all copies or derivations of the materials will be physically and/or electronically destroyed. The Bidder will include with the returned materials, a letter attesting to the complete return of materials, and documenting the destruction of copies and derivations. Failure to so comply will subject this company to liability, both criminal and civil, including all damages to the State and third parties.
- c. The Bidder warrants that if its company is awarded the contract, it will not enter into any agreements or discussions with a third party concerning such materials prior to receiving written confirmation from the State that such third party has an agreement with the State similar in nature to this one.
- d. Any disclosure by a Bidder of information designated by the State as Confidential is a basis for rejection of its proposal and ruling the Bidder ineligible to further participate in the solicitation.
- e. Final proposals are public upon opening, however, the content of all proposals (other than financial information that has been identified as *confidential*³), written correspondence, agenda, memoranda, and evaluation documentation which disclose

³ The State will treat all financial information provided as confidential when designated as such. This information will only be shared with State personnel involved in the evaluation. All financial data will be returned or destroyed if requested.

any aspect of the Bidders' proposals shall be held in the strictest confidence until the Intent to Award is published.

- f. After the Intent to Award is published, all proposals become public records and shall be released or withheld in accordance with the California Public Records Act (Government Code §6250 et seq.)

2.2.3 Solicitation Documents

- a. In addition to an explanation of the State's needs, which must be met, this solicitation includes instructions that prescribe the format and content of proposals to be submitted and the model(s) of the contract(s) to be executed between the State and the successful Bidder.
- b. If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this solicitation, the Bidder shall immediately notify the State of such error in writing and request clarification or modification of the document.
- c. Modifications will be made by **Addenda** issued pursuant to paragraph 2.2.11, Addenda. Such modifications shall be given by written notice to all parties who have formally requested to participate in the solicitation, without divulging the source of the request for same.
- d. If a Bidder fails to notify the State, prior to the date fixed for submission of **Final Proposals**, of a known error in the solicitation or an error that reasonably should have been known to the Bidder, the Bidder shall propose at its own risk; and if awarded the contract, the Bidder shall not be entitled to additional compensation or time by reason of the error or its later correction.

2.2.4 Disposition of Proposals

All materials submitted in response to this solicitation will become the property of the State and will be returned only at the State's option and may be at the Bidder's expense. The master copy shall be retained for official files and will become a public record after the date and time for **Final Proposal** submission. However, confidential financial information submitted in support of the requirement to show Bidder responsibility will be returned upon request. See *Confidentiality*.

2.2.5 Examination of the Work

The Bidder should carefully examine the entire solicitation and any **Addenda** thereto, and all related materials and data referenced in the solicitation or otherwise available, and should become fully aware of the nature and location of the work, the quantities of the work, and the conditions to be encountered in performing the work.

2.2.6 Questions Regarding the Solicitation

Bidders requiring clarification of the intent or content of this solicitation or on procedural matters regarding the competitive proposal process may request clarification by submitting questions in writing to the Procurement Official listed in the solicitation. To ensure a response, questions must be received by the scheduled date(s) given in the solicitation's **Key Action Dates**. The question and answers will be provided to all Bidders without identifying the submitter.

A Bidder who desires clarification or further information on the content of the solicitation, but whose questions relate to a proprietary aspect of the proposal and which, if disclosed to other Bidders, would expose the proposal, may submit such questions marked as "CONFIDENTIAL," and not later than the date specified the solicitation's **Key Action Dates**, to ensure a response. The Bidder must explain why the questions are confidential in nature. If the State concurs that the disclosure of the question or answer would expose the proprietary nature of the proposal, the question will be answered and both the question and answer will be kept in confidence. If the State does not concur with the confidential aspect of a question, the question will not be answered in this manner and the Bidder will be notified as such and given the opportunity to withdraw the question.

2.2.7 Changes Regarding the Solicitation

If the Bidder believes that a solicitation requirement is onerous, unfair, or imposes unnecessary constraints to the Bidder in proposing less costly or alternate solutions, the Bidder may request a change to the solicitation requirement by submitting, in writing, the recommended change and the fact(s) substantiating the Bidder's reasons for making the recommended change. Such requests must be submitted to the Procurement Official by the date specified in the solicitation's **Key Action Dates** for submitting a request for change.

2.2.8 Oral Communications

Oral communications concerning this solicitation shall not be binding on the State or the Bidder and shall in no way excuse the Bidder of its obligations as set forth in this solicitation.

2.2.9 Bidder's Conference

A **Bidder's Conference** may be held, during which Bidders will be afforded the opportunity to meet with State personnel and discuss the content of the solicitation and the bidding process. Written questions received prior to the cutoff date for submission of

such questions, as noted in the solicitation's **Key Action Dates** will be answered at the conference without divulging the source of the query.

The State may also accept oral questions during the conference and will make a reasonable attempt to provide answers prior to the conclusion of the conference. If questions asked at the conference cannot be adequately answered during the discussion, Bidders will be asked to submit those questions in writing. Edited questions and answers will be documented and made available to all Bidders subsequent to the Bidder's Conference.

2.2.10 Intent to Bid

- a. Bidders are asked to state their intention by the date specified in the solicitation's **Key Action Dates**. The State is also interested as to a Bidder's reasons for not submitting a proposal; for example, requirements to which they cannot be responsive or unusual terms and/or conditions which arbitrarily raise costs. Each Bidder is asked to categorize its intent as follows:
 - Will submit a proposal and has no problem with the solicitation requirements.
 - Intends to submit a proposal, but has one or more problems with the solicitation requirements for the reason(s) stated in its response.
 - Does not intend to submit a proposal for the reason(s) stated in its response, and has no problem with the solicitation requirements.
 - Does not intend to submit a proposal because of one or more problems with the solicitation requirements for reasons stated in its response.
- b. If a Bidder has indicated significant problems with the solicitation requirements, the State will examine the stated reasons for the problems and will attempt to resolve any issues in contention, if not contrary to the State's interests, and will amend the solicitation if appropriate.
- c. If after such actions, a Bidder determines that the requirements or procedures of the solicitation unnecessarily restrict its ability to propose, five (5) business days are allowed to submit an **Initial Protest** to those solicitation requirements or the State's action.

2.2.11 Addenda

The State may modify the solicitation prior to the **Final Proposal** submission date by issuance of an **Addendum** to all Bidders who have submitted an Intent to Bid in response to the solicitation at the time the **Addendum** is issued, unless the **Addenda** are such as to offer the opportunity for nonparticipating Bidders to become participating, in which case the **Addendum** will be released in the same manner as the original

solicitation. Addenda will be numbered consecutively. If any Bidder determines that the content of the **Addendum** unnecessarily restricts its ability to propose, five (5) business days are allowed to submit an **Initial Protest** to the **Addendum**.

2.2.12 Bonds

The State reserves the right to require surety faithful performance or supply bond(s) from the contractor in an amount not to exceed the amount of the contract. In the event a surety bond is required by the State that has not been expressly required by the solicitation, the State will reimburse the contractor, as an addition to the purchase price, in the amount not exceeding the standard premium on such bond.

2.2.13 Cash Discounts

The State encourages Bidders to offer cash discounts for prompt payment, however, unless provided for elsewhere in the solicitation, cash discounts offered by Bidder for the prompt payment of invoices will not be considered in evaluating offers to determine the successful Bidder for award of any resulting contract.

2.2.14 Joint Proposals

Joint Proposals will not be accepted for this procurement.

2.2.15 Bidder's Costs

Costs for participating in the solicitation and developing proposals are the responsibility entirely of the Bidder and shall not be chargeable to the State.

2.2.16 Proposal Preparation

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of the solicitation. Expensive binding, colored displays, promotions, etc., are not necessary or desired. Emphasis should be placed on conformance to the solicitation instructions, responsiveness to the solicitation requirements, and on completeness and clarity of content.

2.2.17 Submission of Proposals

- a. Mail or deliver proposals to the Procurement Official listed in the solicitation. If mailed, the Bidder should consider using certified or registered mail with return receipt requested. If a delivery service is used, it is strongly suggested that a reputable delivery service be utilized.

- b. The proposal must be received in the number of copies stated in the solicitation and not later than the dates and times specified in the solicitation's **Key Action Dates**. One copy must be clearly marked "Master Copy." The proposal submission must be sealed and plainly marked as follows:
 - "QUALIFICATION PROPOSAL", "CONCEPTUAL PROPOSAL," "DRAFT PROPOSAL," etc
 - Solicitation Number
 - Date and time for submission
- c. **Final Proposals** not received by the date and time specified in the solicitation's **Key Action Dates** will be rejected. If discrepancies are found between two or more copies of the proposal, the proposal may be rejected. However, if not so rejected, the Master Copy will provide the basis for resolving such discrepancies. If one copy of the **Final Proposal** is not clearly marked "Master Copy," the State may reject the proposal; however, the State may at its sole option select one copy to be used as the Master Copy immediately after proposal opening.
- d. If no time for receipt of proposals is specified in the solicitation, the proposal shall be due by the close of the business day on the date indicated. Close of the business day shall be 5:00 p.m. All times are Pacific Standard Time (PST)/Pacific Daylight Time (PDT).

2.2.18 Model Contract Language

The model contract language appropriate for the specific requirements of this solicitation is contained within the solicitation. Any alteration by a Bidder without the express permission of the State will result in rejection of the Bidder's proposal.

2.2.19 State's Rights

- a. The State reserves the right to reject any and all proposals in the best interests of the State. Proposals cannot, however, be selectively rejected without cause.
- b. If, after full discussion with a Bidder, the State is of the opinion that the Bidder's proposal cannot be restructured or changed in a reasonable time to satisfy the needs of the State, and that further discussion would not likely result in an acceptable proposal in a reasonable time, the Bidder will be given written notice that its proposal has been rejected and that a **Final Proposal** submission will be considered non-responsive.
- c. The State reserves the right to modify or cancel in whole or in part its solicitation.

2.3 PROPOSAL SUBMISSION PHASES AND STEPS

2.3.1 General

2.3.1.1 Overview of Phases and Steps

The phases and steps that will be included in a solicitation are dependent on the needs of the State and will vary from solicitation to solicitation. The applicable steps to a specific solicitation will be included in the **Key Action Dates** of that solicitation. References in this document to phases and steps not included in the solicitation are *not* applicable to the solicitation. In general, though, the primary steps that may be contained in a solicitation are as follows:

1) Compliance Phase

The compliance phase is optional and may contain one or more of the following steps:

- Qualification Proposal
- Conceptual Proposal
- Detailed Technical Proposal

2) Final Phase

The primary steps of the final phase are:

- Draft Proposal (optional)
- Final Proposal (mandatory)

As necessary, more than one submission of a specific proposal may be required. For example, if after review of the Conceptual Proposal, the State determines that solicitation is not eliciting the desired solution, the State may issue an Addendum and require a second submission of a Conceptual Proposal.

2.3.1.2 Content

The solicitation will specify the content and format of each proposal submission.

2.3.1.3 False or Misleading Statements

Proposals which contain false or misleading statements may be rejected. If, in the opinion of the State, such information was intended to mislead the State in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of the solicitation, it will be the basis for rejection of the proposal.

2.3.1.4 Discussion Agenda

As a result of the evaluation, the evaluation team will prepare an agenda of items to discuss with the Bidder, schedule a meeting date, and will transmit the agenda to the Bidder at least three (3) business days prior to the scheduled confidential Bidder discussion. The State will identify concerns, ask for clarification, and express reservations if a particular requirement of the solicitation is not, in the opinion of the State, appropriately satisfied.

The Bidder may submit additions to the agenda.

2.3.1.5 Confidential Bidder Discussion

The evaluation team will meet with each Bidder for the purpose of discussing its proposal submission in detail. The primary purpose of the discussion is to ensure that the Bidder's **Final Proposal** will be responsive. The Bidder may bring to the discussion those persons that may be required to understand the issues and answer questions. At this time, the Bidder may be asked to give a presentation of its proposal.

While the State will not make counter proposals to a Bidder's proposed solution to the solicitation requirements, the discussion may allow for the exploration of other solutions and/or responses to requirements. As appropriate the State may ask for, and/or the Bidder may choose to, submit additional questions in writing at the end of the discussion.

2.3.1.6 Discussion Memorandum

Throughout the discussion, the State may maintain a record of all items discussed that require modifications to the solicitation in a future **Addendum**. If the State elects, these modifications to the solicitation will be prepared in final form as a **Discussion Memorandum** (which will be the official State documentation of the discussion) and will be provided to the Bidder normally within five (5) business days of the conclusion of the discussion and at least five (5) business days prior to the next submission due date. If a Bidder discovers any discrepancy, omission, or other error in the memorandum, the Bidder shall immediately notify the State of such error in writing and request clarification or correction. Oral statements made by either party *not* recorded in the **Discussion Memorandum** shall not obligate either party.

2.3.1.7 Evaluation of Proposal(s)

Upon receipt of proposals other than the **Final Proposal**, the State's evaluation team or a portion thereof will review each proposal in accordance with the

evaluation methodology outlined in the solicitation for the purpose of identifying areas in which the proposal is non-responsive to a requirement, is otherwise defective, or in which additional clarification is required.

While the State's evaluation at this stage *is* comprehensive, Bidders are cautioned to not rely on the State during these evaluations and reviews to discover and report all defects and errors. Before submitting each document, the Bidder should carefully proof it for errors and adherence to the solicitation requirements. The State will not provide any warranty that all defects have been detected and that such notification will not preclude rejection of the **Final Proposal** if such defects are later found.

2.3.1.8 Proposal Evaluation Preferences

In evaluation of proposals, the State will give preferences in accordance with the law for suppliers who are a California certified Small Business. If the Bidder claims preferences under the Enterprise Zone Act (EZA), Target Area Contract Preference Act (TACPA) and Local Agency Military Base Recovery Act (LAMBRA), the Bidder must complete and return the appropriate forms. Preferences may also be given for Bidders using recycled products in accordance with Public Contract Code §§ 10408 and 12150 et seq. Where multiple preferences are claimed, the State will verify eligibility for the preference(s) and evaluate and apply preferences in accordance with the law and established procedures.

2.3.1.9 Submission of Amended Proposal(s)

At the conclusion of a Confidential Discussion, the State may require the submission of a written amendment to the proposal consisting only of those items that were in question, or a complete, written re-submittal of the proposal. Similarly, if the Bidder wishes confirmation that the changes it intends to make in its proposal are acceptable to the State, the Bidder may request and receive permission, if time permits, to submit such amendment within a reasonable time after the conclusion of the Confidential Discussion. In either event, the State will advise the Bidder about the acceptability of the amended proposal, and/or may schedule another Confidential Discussion, if in the State's opinion, such a discussion is desirable.

2.3.1.10 Withdrawal and Resubmission/Modification of Proposals

Other than the **Final Proposal**, a Bidder may withdraw its proposal at any time by written notification. A Bidder may withdraw its **Final Proposal** at any time *prior* to the proposal submission time specified in the solicitation's **Key Action Dates** by submitting to the Procurement Official a written notification of its

withdrawal signed by the Bidder or agent authorized in accordance with **Signature of Proposal**. Thereafter, the Bidder may submit a new or modified proposal prior to such **Final Proposal** submission time specified in the solicitation's **Key Action Dates**. Modifications offered in any other manner, oral or written, will not be considered. **Final Proposals** cannot be changed or withdrawn *after* the designated time for receipt, except as provided in the solicitation.

2.3.2 Compliance Phase

2.3.2.1 General

The Compliance Phase is an iterative, conversational mode of proposal development. It requires the State, working together in confidence with each Bidder to assess and discuss the viability and effectiveness of the Bidder's proposed methods of meeting the State's needs as reflected in the solicitation. This phase provides the flexibility needed for the Bidder to test its solution prior to submittal of its **Final Proposal**. The Compliance Phase facilitates the correction of defects before they become **Material** to the proposal. Release of a **Discussion Agenda**, scheduling of a Confidential Discussion, and release of a **Discussion Memorandum** may be included with these steps.

2.3.2.2 Qualification Proposal

The purpose of the compliance phase is to identify those Bidders with the skills, resources, and experience to perform the services and/or provide the deliverables required in the solicitation. The **Qualification Proposal** may be included for the purpose of allowing the State to identify the most qualified and serious Bidders for a solicitation, especially when the Bidder pool is likely to be extensive.

2.3.2.3 Conceptual Proposal

The **Conceptual Proposal** may be included for the purpose of allowing each Bidder to provide a general concept of its proposal with just enough detail to enable the evaluators to determine if the Bidder is on the right track toward meeting the functional/business requirements as stated in the solicitation; and if not, where the Bidder must change its concept. This step invites the Bidder to be as innovative as the solicitation requirements allow.

2.3.2.4 Detailed Technical Proposal

The **Detailed Technical Proposal** may be included for the purpose of allowing each Bidder to provide a detailed description of its proposal to determine at an

early stage whether its proposal appears to comply with the requirements of the solicitation, and if not, which elements are non-compliant.

2.3.3 Final Phase

2.3.3.1 General

The purpose of the Final Phase is to obtain proposals that clearly describe the Bidder's solution and are responsive in every aspect to the solicitation. This phase *may* include a **Draft Proposal** and *must* include a **Final Proposal**.

2.3.3.2 Draft Proposal

The purpose of the **Draft Proposal** is to provide the State with a complete proposal, excluding cost data, in order to identify any non-responsive aspects of the proposal which, if not corrected, could cause the **Final Proposal** to be rejected.

The **Draft Proposal** must contain everything that is required in the **Final Proposal** except cost data that reveals the approximate proposal cost or allows the State to derive the approximate proposal cost. Cost figures must be replaced with XX's as required by the solicitation. The inclusion of cost data in the **Draft Proposal** may be the basis for rejection of the proposal and notification to the Bidder that it may not participate further in the solicitation process.

The **Draft Proposal** must contain the cover letter and the Standard Agreement (STD. 213), including the title of the person that will sign, but need not contain the **Signature**. The **Draft Proposal** shall contain the contract with all portions completed except for the cost data.

Review of the **Draft Proposal** by the State is only intended to include an initial assessment of the proposal's responsiveness to the minimum requirements of the solicitation, including administrative requirements. (Points awarded for scored requirements will not be evaluated at this step.) The State will notify the Bidder of any defects *detected* in the **Draft Proposal**, or of the fact that no defects were *detected*. Such notification is intended to minimize the risk that the **Final Proposal** will be deemed non-responsive; however, the State will not provide any warranty that all **Material** deviations have been detected and that such notification will not preclude rejection of the **Final Proposal** if such **Material** deviations are later found.

2.3.3.3 Final Proposal

The **Final Proposal** must be complete, including all required information, cost information, required **Signatures**, etc. as required by the solicitation (incorporating all solicitation **Addenda**). Bidders are advised that changes to the **Final Proposal**, other than the correction of potentially **Material** deviations, increase the risk that the **Final Proposal** may be found to contain **Material** deviations.

The State reserves the right to consider electronic proposals, received prior to the closing time specified, if confirmed in writing within five (five) business days.

2.3.3.4 Additional Draft Proposal

The State may declare the **Final Proposal** (including cost proposals) to be an additional **Draft Proposal** in the event that the evaluation team determines that original **Final Proposals** from *all* Bidders either contained deviations or were not responsive to the State's needs, and that it is in the best interest of the State to continue the solicitation process. If this occurs, the State will issue an **Addendum** to the solicitation and a confidential discussion will be held with each Bidder that submitted an original **Final Proposal**. Each Bidder will be informed of the revised submission date of the new **Final Proposal**.

2.3.3.5 Submission of Final Proposal

a. Complete Proposal

The **Final Proposal** must be complete in all aspects as required by the solicitation.

A **Final Proposal** must be rejected if any such defect or irregularity constitutes a deviation from the solicitation requirements. The **Final Proposal** must contain all costs required by the solicitation.

b. Signatures

- 1) The **Final Proposal** must contain an original **Signature** in two places: On the cover letter or transmittal form (which shall be considered an integral part of the **Final Proposal**) and the Standard Agreement (STD. 213).
- 2) The **Signature** must be of an individual who is authorized to bind the Bidder firm contractually. A **Final Proposal** may be signed by an agent of the Bidder only if the signatory is an officer of a corporate Bidder authorized to sign contracts on its behalf, a member of a partnership Bidder, or is properly authorized by a power of attorney or equivalent

document. Such authorization must be submitted to the State prior to the submission of proposals or with the proposal.

- 3) The name and title or position that the individual holds in the firm must be typed immediately below the **Signature**.
- 4) An unsigned **Final Proposal** may be rejected.

2.3.3.6 Evaluation and Selection of Final Proposal

a. General

Final Proposals will be evaluated according to the procedures contained in the solicitation.

b. Questions during the Evaluation

During the evaluation of the **Final Proposal**, the State may desire the presence of a Bidder's representative for answering specific questions, orally and/or in writing.

c. Demonstration

As part of the evaluation and selection process, the solicitation may require a **Demonstration** of *all* responsive, responsible Bidder's responses to specific requirements (including benchmark requirements) before final selection in order to verify the claims made in the proposal and corroborate the evaluation of the proposal. The Bidder must make all arrangements for **Demonstration** facilities at no cost to the State. The Bidder will determine the location of the **Demonstration**; however, its performance within California is preferred and will be attended at the State's expense. Demonstration outside of California requires special approvals and is subject to approval by the State and will be attended only if the Bidder agrees to reimburse the State for travel and per diem expenses for all evaluation team members. Demonstration outside of the United States is prohibited.

The State reserves the right to determine whether or not a **Demonstration** has been successfully passed as described in the solicitation.

d. Errors in the Final Proposal

An error in the **Final Proposal** may cause the rejection of that proposal; however, the State may at its sole option retain the proposal and make certain corrections.

In determining if a correction will be made, the State will consider the conformance of the proposal to the format and content required by the solicitation document, and any unusual complexity of the format and content required by the solicitation document.

- 1) If the Bidder's intent is clearly established based on review of the complete **Final Proposal** submittal, the State may at its sole option correct an error based on that established intent.
- 2) The State may, at its sole option, correct obvious clerical errors.
- 3) The State may at its sole option correct discrepancy and arithmetic errors on the basis that if intent is not clearly established by the complete proposal submittal the Master Copy shall have priority over additional copies, the proposal narrative shall have priority over the contract, the contract shall have priority over the cost sheets, and within each of these, the lowest level of detail will prevail. If necessary, the extensions and summary will be recomputed accordingly, even if the lowest level of detail is obviously misstated. The total price of unit-price items will be the product of the unit price and the quantity of the item. If the unit price is ambiguous, unintelligible, uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the total price by the quantity of the item.
- 4) The State may at its sole option correct errors of omission, and in the following four situations, the State will take the indicated actions if the Bidder's intent is not clearly established by the complete proposal submittal.
 - i. If an item is described in the narrative and omitted from the contract and cost data provided in the proposal for evaluation purposes, it will be interpreted to mean that the item will be provided by the Bidder at no cost.
 - ii. If a minor item is not mentioned at all in the **Final Proposal** and is essential to satisfactory performance, the proposal will be interpreted to mean that the item will be provided at no cost.
 - iii. If a major item is not mentioned at all in the **Final Proposal**, the proposal will be interpreted to mean that the Bidder does not intend to supply that item.

- iv. If a major item is omitted, and the omission is not discovered until after contract award, the Bidder shall be required to supply the item at no cost.
- v. If a Bidder does not follow the instructions for computing costs not related to the contract (e.g., State personnel costs), the State may reject the proposal, or at its sole option, re-compute such costs based on instructions contained in the solicitation.
- vi. If the re-computations or interpretations, as applied in accordance with this section, result in significant changes in the amount of money to be paid to the Bidder (if awarded the contract) or in a requirement of the Bidder to supply a major item at no cost, the Bidder will be given the opportunity to promptly establish the grounds legally justifying relief from its proposal.

2.3.4 Award of Contract/Intent to Award

Award of contract, if made, will be in accordance with the solicitation to a responsive and responsible Bidder whose **Final Proposal** complies with all the requirements of the solicitation documents and any **Addenda** thereto, except for such immaterial defects as may have been waived by the State. Notwithstanding the above, the Department of General Services reserves the right, in its sole discretion, to engage in negotiations pursuant to Public Contract Code Section 6611 and the guidelines and procedures adopted in accordance therewith including, but not limited to, Administrative Order 04-03 (issued March 5, 2004) or any amendment or replacement thereto.

The State will determine the awarded Bidder either on the basis of individual items or on the basis of all items included in its solicitation, unless otherwise expressly provided in the solicitation.

Written notification of the State's intent to award will be made to all Bidders. If a Bidder, having submitted a **Final Proposal**, can show that they, instead of the Bidder selected by the State, should be selected for contract award according to the solicitation, the Bidder will be allowed five (5) business days to submit a protest to the Intent to Award, according to the instructions contained in **Protests**.

2.3.5 Debriefing

A debriefing may be held after contract award at the request of any Bidder for the purpose of receiving specific information concerning the evaluation. The discussion will be based primarily on the technical and cost evaluations of the Bidder's **Final Proposal**. A debriefing is not the forum to challenge solicitation specifications or requirements.

2.4 CONTRACT TERMS AND CONDITIONS

2.4.1 Standard – No Modifications

Unless otherwise specified in the solicitation, the terms and conditions (model contract language) of the contract to be awarded are included in the solicitation document in its final form, and any alteration by a Bidder will result in rejection of the proposal. However, the Statement of Work may be modified to incorporate the Bidder's proposal.

2.4.2 Exception – With Modifications

2.4.2.1 Overview

If specified in the solicitation, the solicitation process will allow the Bidder for certain terms and conditions, to substitute and/or insert Bidder-specified language. All such substitutions and insertions must be approved by the Department of General Services. The solicitation will allow for contract terms and conditions modifications since the State recognizes that the various suppliers of Information Technology goods and services have developed pricing structures and procedures that differ from each other, and that, if the State were to specify the exact language of the contract to be executed, it could result in firms being unwilling to do business with the State of California because of contract statements which are incompatible with its business methods. It is presumed that for all sections of the Model Contract for which the Bidder does not submit a language change in response to these instructions, the Bidder accepts such section as written in the Model Contract.

The Department of General Services may request the Department of Finance's concurrence on the approval of changes involving significant issues. Terms and conditions which do not comply in substance with all **Material** requirements of the solicitation, which are contrary to the best interests of the State, or which are in opposition to State policy will not be accepted.

To comply with the requirements of competitive proposal submission procedures, the contract terms and conditions must be fixed prior to the submission of the **Final Proposals**; no changes are permissible after that time unless otherwise noted in the solicitation.

It is essential that the Bidder's proposed contract be acceptable to the State prior to the **Final Proposal** submission date. Such acceptance does not relieve the Bidder of providing other necessary information required in the contract. If a proposal contains unapproved contract language, the potential for proposal rejection is substantially increased.

2.4.2.2 Submission of Changes

It is required that Bidders submit their proposed contract to the State in accordance with the schedule contained in the solicitation's **Key Action Dates**. The proposed contract must contain all proposed terms and conditions, and with all blanks filled in, but it must not contain (other than in sample form) any identification of proposed goods or cost data. The proposed contract must be clearly labeled "Proposed Contract" with the solicitation identification from the solicitation's title page.

a. Instructions to Submit Changes

Use these instructions to substitute and/or insert Bidder-specified language to the model contract language. Proposed contract language that is not prepared in accordance with these instructions may be returned to the Bidder without review by the State. The State will not consider or discuss any proposed changes that do not specify the EXACT WORDING of the requested change. Each proposed change should set forth the requested change in a REDLINED format or in such other way that a reasonably experienced typist could make the requested change to the Model Contract without the need for further discussion or direction or any interpretation. Only those items identified in the modified sections will be discussed at any meetings between the State and the Bidder. Language in the Model Contract that is not addressed by the Bidder in a proposed change shall be deemed accepted by such Bidder as presented by the State.

- 1) Annotate the model contract language at the place of the proposed change. Use ~~strikeout~~ text to identify deletions and underline all insertions. Annotations may be used to clarify the change, but do not insert footnotes nor delete text numbering such that the original paragraphs are renumbered. Do not retype the contract, and **DO NOT INCLUDE ANY DOLLAR FIGURES.**
- 2) Prepare transmittal cover letter that identifies and numbers each proposed change to be made to the model contract language and explains (except where the reason for the change is obvious) the rationale for the change.
- 3) Submit the transmittal cover letter and the annotated model contract language to the Procurement Official no later than the date specified in the solicitation's **Key Action Dates**. Early submission of the annotated model contract language will facilitate the review and discussion process.

b. State's Response to Submitted Changes

Upon receipt of the changes, the State will review the changes to identify the acceptability of the changes. The State will notify the Bidder as to which changes are or not acceptable to the State.

c. Discussion of Submitted Changes

The State will arrange an appropriate meeting with the Bidder at a mutually satisfactory time to resolve any differences. The State may, following such a meeting, request a revised contract that reflects agreed changes to be prepared and returned by the Bidder.

2.4.2.3 Notification of Changes

The solicitation will be amended to reflect the acceptable changes and/or Bidders may be notified of changes allowed by the State.

2.5 PROTESTS**2.5.1 Initial Protest**

- a. The procedures in the solicitation process are designed to give the Bidder adequate opportunity to submit questions; requirements change requests, and procedure change requests before the **Final Proposal** is due.
- b. An **Initial Protest** is a protest of the requirements and/or the procedures of this solicitation.
- c. It is made available in the event that a Bidder cannot reach a fair agreement with the State regarding its requirements *after* exhausting these procedures (PCC §12102(h)) and must be submitted as described below.
- d. However, before an **Initial Protest** is submitted, the Bidder must make full and timely use of the process described herein to resolve any outstanding issue(s) between the Bidder and the State.
- e. Protests regarding *any issue* other than selection of the "successful supplier" will be heard and resolved by the Deputy Director of the Department of General Services Procurement Division whose decision will be final.

2.5.2 Successful Supplier Selection Protest

2.5.2.1 Standard Protest

Unless otherwise specified in the solicitation, the protest procedure specified in (PCC §12102(h)) will govern the solicitation.

If a Bidder has submitted a proposal which it believes to be totally responsive to the requirements of the RFP and to be the proposal that should have been selected according to the evaluation procedure described in the solicitation, and the Bidder believes the State has incorrectly selected another Bidder for award, the Bidder may submit a protest of the selection as described below. Protests regarding selection of the “successful supplier” will be heard and resolved by the California Victims Compensation and Government Claims Board whose decision will be final.

2.5.2.2 Alternative Protest Pilot

The solicitation may specify that it is being conducted under the provisions of the Alternative Protest Pilot Project (Public Contract Code §12125, et seq.) By submitting a proposal to a solicitation conducted under the Alternative Protest Pilot Project, the Bidder agrees that all protests of the proposed award be resolved by binding arbitration. Alternative Protest Pilot Project Procedures (California Code of Regulations, Title 1, Division 2, Chapter 5) may also be accessed via the Internet at: <http://www.oah.dgs.ca.gov/laws/bidregs.asp>.

2.5.3 Protest Submission

Initial Protests must be submitted to:

The Procurement Official identified in the solicitation, and
Department of General Services, Procurement Division
Deputy Director
707 3rd Street
West Sacramento, CA 95605

Successful supplier selection protests must be submitted to:

The Procurement Official identified in the solicitation, and
Department of General Services, Procurement Division
Deputy Director
707 3rd Street
West Sacramento, CA 95605

And;

Department of General Services, Procurement Division
Protest Coordinator
707 3rd Street
West Sacramento, CA 95605

A Vendor Advocate has been established in accordance with PCC§10300 as a resource to protesting Bidders seeking assistance and information. Contact the Procurement Official or contact the Procurement Division at (916) 375-4400 for assistance.